In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 478

VILLAGE OF ALSIP, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The facts, as stated by the court of appeals (Pet. App. 1a–5a), can be summarized as follows: The taxpayers (Alfred H. and Joyce B. Rado) were developers of a residential subdivision in the village of Alsip ("Alsip"), adjacent to Chicago, Illinois. They hired Santry Construction Company ("Santry") to construct a water system to bring water from Chicago to the subdivision. Alsip supervised the bidding that resulted in the contract and required Santry to post a completion bond with it (Pet. App. 2a). The contract provided that Santry would "look to" the taxpayers for payment, and that Alsip was "not to be liable in any manner for payment of said construction" (*ibid.*).

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Alsip agreed to purchase the water system from the taxpayers at cost, and upon completion of the system an engineer of Alsip certified the cost to be $59,644.58. The taxpayers paid Santry $28,600 of this amount. Alsip issued bonds to provide the funds for paying the taxpayers for the water system (Pet. App. 3a).

After the water system was completed, the United States served upon Alsip notices of levy that it had a lien upon all property of the taxpayers arising out of the latter's tax liability, and demanding that Alsip pay to the United States any amount that it owed the taxpayers (Pet. App. 3a). After receiving such notices, Alsip paid Santry the $31,044.58 remaining on the $59,644.58 construction price of the water system (Pet. App. 4a).

The United States sued Alsip for failure to honor the levy on several amounts due the taxpayers, including the $31,044.58.[1] Alsip defended primarily on the ground that it was not legally obligated to pay any of the construction price of $59,644.58 to the taxpayers and therefore had no property or rights to property of the taxpayers to which the federal liens could attach. Alternatively, it argued that, assuming it was obligated to the taxpayers, its payment to Santry was proper because the latter had a lien against the right to payment superior to that of the United States (Pet. App. 6a). The district court granted the United States' motion for summary judgment, and the court of appeals affirmed. It held that the district court

[1] The United States also sued the taxpayers on their liability and obtained a default judgment against them for $130,977.05 (Pet. App. 1a).

correctly had found, on the undisputed evidence before it, that Alsip was legally obligated to pay the taxpayers the $59,644.58. It pointed out (Pet. App. 6a) that:

> * * * taxpayers contracted with Santry to construct a water main-extension; this contract provided that taxpayers and not Alsip were to be liable to Santry for payment of this construction; Alsip agreed to purchase this water main extension from taxpayers; taxpayers paid Santry $28,600 of a total of $59,644.58 due for the construction; and Alsip adopted a resolution and pursuant thereto paid Santry the unpaid amount owed Santry by taxpayers, $31,044.58.

The court rejected Alsip's contention that Illinois law did not authorize its purchase of the water system (Pet. App. 7a–8a).

As to whether Santry or the United States had a superior claim to the $31,044.58 that Alsip owed the taxpayers, the court held that since the contractor had expressely waived any right to payment by Alsip, it was merely a general creditor of the taxpayers, while the federal tax lien gave the United States a prior claim (Pet. App. 9a).

The petition for certiorari raises no important questions. The court of appeals decided only that under State law Alsip was legally obligated to pay the taxpayers the construction cost of the water system, and that in its contract with the taxpayers Santry had waived any right to look to Alsip for payment. The correctness of those rulings, which turn largely upon the particular facts and which we fully support,

plainly presents no question warranting further review.[2]

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[2] Neither of petitioner's two other arguments has merit. (1) Its contention (Pet. 49–50) that it was improperly held liable for interest rests on the theory, which the courts below rejected, that it was not liable for the principal amount of its indebtedness to the taxpayers. (2) Its contention that summary judgment was improper because there were factual issues relating to its obligation to pay the construction cost, is raised for the first time in this Court, and is nothing more than an attempt to reargue in somewhat different form questions of State law that were resolved against it.

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